

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SAMUEL GARCIA, D/B/A CAVALRY
MEMORIAL,

No.

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,

Defendant.

NOTICE OF REMOVAL

Defendant, Travelers Casualty Insurance Company of America (“**Travelers**”), through its attorneys, and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 and D.N.M.LR-Civ. 81.1, removes this civil action from the Fifth Judicial District, Lea County, New Mexico, to the United States District Court for the District of New Mexico. In support of this Notice of Removal, Travelers would show the Court as follows:

1. Travelers is the only Defendant in a civil action pending in Fifth Judicial District, Lea County, New Mexico, entitled *Samuel Garcia, D/B/A/ Cavalry Memorial v. Travelers Casualty Insurance Company of America*, case number D-506-CV-2017-00188. Copies of all pleadings filed in the state court are attached hereto. Specifically, the Complaint is attached as **Exhibit A**, the Summons is attached hereto as **Exhibit B**, and a current docket sheet is attached hereto as **Exhibit C**.

2. This Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b) because it is filed within one year of commencement of this action and within thirty days of the date that Travelers first received the Complaint. The Complaint was filed on February 13, 2017. Plaintiff served its Complaint on Travelers via the New Mexico Superintendent of Insurance, on March 7, 2017 (see letter from Superintendent of Insurance, attached as **Exhibit D**). This Notice of Removal is filed within 30 days of receipt by Travelers of the Summons and Complaint. 28 U.S.C. § 1446(b).

3. Plaintiff alleges the following claims for relief against Travelers: (1) breach of contract; (2) unfair insurance claims practices; (3) bad faith; and (4) negligence.

Diversity of Citizenship

4. Plaintiff Samuel Garcia d/b/a Calvary Memorial (“**Plaintiff**”) is an individual doing business in Lea County, New Mexico. *See* Complaint ¶¶ 1, 8. On information and belief, Plaintiff Garcia is a resident and citizen of the State of New Mexico.

5. Plaintiff’s Complaint alleges that Travelers is a foreign corporation. Complaint, ¶ 4. Counsel for Travelers hereby confirms and certifies that Travelers is incorporated in the State of Connecticut with its principal place of business located in the State of Connecticut. Travelers is a corporate citizen of a state other than New Mexico.

6. Because Plaintiff is a citizen of the State of New Mexico, and Travelers is incorporated in the State of Connecticut with its principal place of business in the State of Connecticut, there is complete diversity of citizenship between the parties. 28 U.S.C. § 1332.

Amount in Controversy

7. The amount in controversy exceeds the requisite \$75,000 set forth in 28 U.S.C. § 1332(a) for diversity jurisdiction. The Complaint sets forth the amount of \$141,190.95 as the amount of Plaintiff's repair estimate. Complaint, ¶ 13. Travelers may rely on an estimate of the potential damages from the allegations in the complaint to determine the amount in controversy. *McPhail v. Deere & Co.*, 529 F.3d 947, 955 (10th Cir. 2008). Additionally, Plaintiff's Complaint seeks actual damages, consequential damages, pre-judgment interest, additional statutory damages, and post judgment interest. *See Exhibit A.* A complaint that presents a combination of facts and theories of recovery that may support a claim in excess of \$75,000 can support removal. *Id.*

8. Accordingly, this Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.

9. Promptly upon filing this Notice of Removal, Travelers will give written notice of the filing to Plaintiff as required by law. Travelers is concurrently filing a notice attaching this Notice of Removal with the Clerk of the Fifth Judicial District, Lea County, New Mexico, where this action was originally filed.

WHEREFORE, Travelers requests that this Court accept its Notice of Removal and assume jurisdiction over this action.

EATON LAW OFFICE, P.C.

By -Electronically signed by P. Scott Eaton-

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CERTIFICATE OF SERVICE

I hereby certify that, on the 6th day of April, 2017 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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/s/ P. Scott Eaton